

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

2004 AUG -9 P 4:19

STEPHEN LUMAN

VS.

GUADALUPE COUNTY
AND ARNOLD ZWICKE

§
SA 04-1062-CV 13 RF
C.A. No. 04-1062-CV
§ Removed from the 25th District Court
§ of Guadalupe County, Texas
§
§

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Defendants, Guadalupe County and Arnold Zwicke ("Defendants"), file this Notice of Removal and say:

1. Plaintiff filed this action in State District Court, styled Cause No. 04-1062-CV, *Stephen Luman v. Guadalupe County and Arnold Zwicke*, in the 25th District Court of Guadalupe County, Texas on July 2, 2004. Defendants received copies of the original petition ("Complaint") and citation on July 7, 2004. Attached as Exhibits "A" & "B" respectfully are (1) the citation for service; (2) the officer's return of service; and (3) plaintiff's original petition for Defendants Guadalupe County (Ex. A) and Arnold Zwicke (Ex. B). Further, Defendants' original state court answer is attached hereto as Exhibit "C" and the state court's docket sheet is attached hereto as Exhibit "D."

2. Federal Question-Jurisdiction. In this case the Plaintiff is claiming violation of his federal and state constitutional rights to freedom of speech and political activity. Plaintiff asserts he was terminated by the Defendants for engaging in speech and political activity. As Plaintiff is alleging a violation of his federal constitutional rights, this court has original jurisdiction over this

civil action under 28 U.S.C. § 1343(3) and 1441(a). Therefore, the case may be removed to this court pursuant to 28 U.S.C. § 1441(b) and 1446(a)(b).

3. Plaintiff's Claims. Plaintiff is claiming violation of his federal and state constitutional rights to freedom of speech and political activity in his Original Petition filed on July 2, 2004. Consequently, there is a federal question at issue.

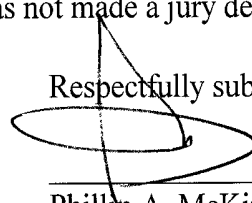
4. Removal is Timely. This Notice of Removal is filed within thirty (30) days after service of the initial pleading showing that the case is removable. Therefore, removal is timely.

5. State Court Pleadings. Copies of all documents to be filed with the Notice of Removal are attached.

6. Consent of all Defendants. Defendants Guadalupe County and Arnold Zwicke consent to this removal.

7. Jury Demand. Plaintiff has not made a jury demand in the state court lawsuit.

Respectfully submitted,



Phillip A. McKinney
Federal I.D. No. 13867
State Bar No. 13723200
Attorney-in-Charge for Defendants,
Guadalupe County and Arnold Zwicke
Angelica E. Hernandez
Federal I.D. No. 27469
State Bar No. 24027279
McKINNEY & HERNANDEZ, P.C.
P. O. Box 2747
Corpus Christi, Texas 78403
(361) 879-0300
Fax (361) 879-0303

CERTIFICATE OF SERVICE

I certify that on August 6, 2004, a complete and correct copy of **Defendants' Notice of Removal** was served on each party by delivery to the following in the manner indicated below:

Via CM/RRR 7000 1530 0005 5044 7210:

Law Offices of Ronald B. Prince
Law Office of Barbara Woodward
c/o 417 San Pedro
San Antonio, Texas 78212

A handwritten signature in black ink, appearing to be 'P. McKinney', written over a horizontal line.

Phillip A. McKinney

NO. 04-1062-CV

STEPHEN LUMAN

V.

GUADALUPE COUNTY
AND ARNOLD ZWICKE

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IN THE DISTRICT COURT

25th JUDICIAL DISTRICT

GUADALUPE COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes STEPHEN LUMAN, hereinafter referred to as Plaintiff, and files this his Original Petition, complaining of the GUADALUPE COUNTY and ARNOLD ZWICKE Individually and in his Official Capacity as Sheriff of Guadalupe County, hereinafter referred to as Defendants, and for cause of action, Plaintiff would show unto the Court and Jury the following:

FILED
8-05 AM

JUL 02 2004

I.

Plaintiff is a resident of the State of Texas.

JAMES BEHRENDT
Clerk Dist. Court, Guadalupe Co. TX
By Deanna Deputy

Defendant, GUADALUPE COUNTY can be served by serving citation upon the Honorable Donald Schraub, Guadalupe County Judge by private process. Defendant, ARNOLD ZWICKE can be served by serving citation at the Guadalupe County Sheriff's Department by private process.

II.

Venue in this cause of action against the Defendants, GUADALUPE COUNTY and ARNOLD ZWICKE, is proper in Guadalupe County, Texas.

III.

Plaintiff would show that he was at all times material hereto a public employee who performed services for compensation for the Defendant GUADALUPE COUNTY. Plaintiff would further show that Defendant, GUADALUPE COUNTY is a local governmental body and ARNOLD ZWICKE is an individual and is the Sheriff of GUADALUPE COUNTY. Plaintiff would further show that he has been retaliated against and terminated by Defendants, GUADALUPE COUNTY, and ARNOLD ZWICKE in violation of his federal and state constitutional rights to freedom of speech and political activity.

IV.

Plaintiff would further show that he is protected as a public employee who engages in speech and political activity. On Plaintiff's date of termination, Plaintiff was qualified and able to continue performing his duties as a law enforcement officer. At the time of Plaintiff's termination, Plaintiff had a reasonable anticipation of being employed as a law enforcement officer until retirement and then being entitled to retirement benefits. Plaintiff's termination was without legal justification. Plaintiff would show that he is entitled to damages, reinstatement, compensation for wages lost and reinstatement of any fringe benefits or seniority rights lost, costs of court and attorney fees.

V.

Plaintiff would show that all conditions precedent have been met for the bringing of this lawsuit.

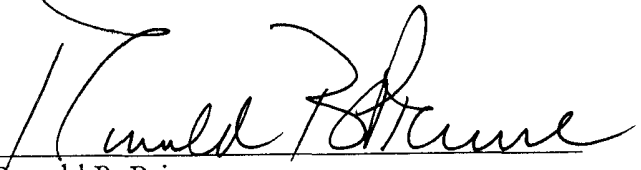
VI.

Plaintiff requests prejudgment interest and postjudgment interest.

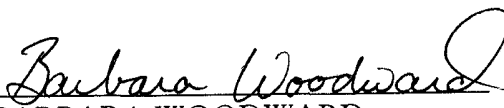
WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be duly cited to appear and answer herein; and that upon final trial hereof, the Plaintiff recover judgment against the Defendants for his damages in a sum in excess of the jurisdictional limits of this Court. Plaintiff further prays for both prejudgment interest and postjudgment interest at the lawful rate until fully paid, for all costs of Court incurred in his behalf, and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

LAW OFFICES OF RONALD B. PRINCE
7285 Hwy 87 East
San Antonio, Texas 78263
(210) 826-2492
(210) 826-2435 FAX

BY: 
Ronald B. Prince
State Bar No. 16329300

LAW OFFICE OF BARBARA WOODWARD
417 San Pedro
San Antonio, Texas 78212
(210) 227-7821
(210) 225-4469 FAX

BY: 
BARBARA WOODWARD
State Bar No. 21975500

ATTORNEY FOR PLAINTIFF,
STEPHEN LUMAN

3:00 p

Case No. 04-1262-CV

State of Texas
 IN GUADALUPE COUNTY
 COUNTY JUDGE
 DONALD SCHRAUB
 GUADALUPE COUNTY, TEXAS 78155

E. R. Baranway

86428

Wherefore, in the event of failure to comply with the above conditions,
 "You have been cited to appear in court on the 07 day of July, 2004 at 8:30 a.m. If you do not file a written answer with the clerk of said court by 10:00 a.m. on the Monday next following the expiration of 30 days after you were served this citation and PLAINTIFF'S ORIGINAL PETITION, a default judgment may be taken against you." In the above numbered cause, styled,

STEPHEN LUMAN

vs.
 GUADALUPE COUNTY AND DONALD SCHRAUB

Said petition filed said day of the said 2004
 by
 DONALD P. PRINCE
 617 SAN PEDRO
 SAN ANTONIO, TX 78204

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, this
 July 2nd, 2004.

JAMES BEHRENDT, DISTRICT CLERK
 GUADALUPE COUNTY COURTHOUSE
 101 E. COURT ST.
 SEGUIN, TEXAS 78155

By: *[Signature]*

OFFICER'S RETURN

Came to hand on the 07 day of July, 2004 at 8:30 o'clock A.m. Executed at 307 W. Court St., Seguin, Tx within the County of Guadalupe, at 8:55 o'clock A.m. on the 07 day of July, 2004, by delivering to the within named Guadalupe County by serving County Judge Donald Schraub a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to said copy of citation and endorsed on such copy of citation the date of delivery.

Not executed, the diligence used to execute being _____
 _____; for the following reason _____
 _____, the defendant may be found _____

TO CERTIFY WHICH WITNESS MY HAND OFFICIALLY

SUBSCRIBED AND SWORN TO before me on July 2nd 2004 by David Scott Busch
Maed Park
 NOTARY PUBLIC

Guadalupe COUNTY
 DISTRICT COURT
 CLERK
 454288-7944

ORIGINAL - return to court

DISTRICT COURT, GUADALUPE COUNTY, TEXAS

NO. 04-1002-CV

STEPHEN LUMAN

V.

GUADALUPE COUNTY
AND ARNOLD ZWICKE

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§

IN THE DISTRICT COURT

25th JUDICIAL DISTRICT

GUADALUPE COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes STEPHEN LUMAN, hereinafter referred to as Plaintiff, and files this his Original Petition, complaining of the GUADALUPE COUNTY and ARNOLD ZWICKE Individually and in his Official Capacity as Sheriff of Guadalupe County, hereinafter referred to as Defendants, and for cause of action, Plaintiff would show unto the Court and Jury the following:

FILED
8:05 AM

JUL 02 2004

I.

Plaintiff is a resident of the State of Texas.

JAMES BEHRENDT
Clerk Dist. Court, Guadalupe Co. TX
By [Signature] Deputy

Defendant, GUADALUPE COUNTY can be served by serving citation upon the Honorable Donald Schraub, Guadalupe County Judge by private process. Defendant, ARNOLD ZWICKE can be served by serving citation at the Guadalupe County Sheriff's Department by private process.

II.

Venue in this cause of action against the Defendants, GUADALUPE COUNTY and ARNOLD ZWICKE, is proper in Guadalupe County, Texas.

III.

Plaintiff would show that he was at all times material hereto a public employee who performed services for compensation for the Defendant GUADALUPE COUNTY. Plaintiff would further show that Defendant, GUADALUPE COUNTY is a local governmental body and ARNOLD ZWICKE is an individual and is the Sheriff of GUADALUPE COUNTY. Plaintiff would further show that he has been retaliated against and terminated by Defendants, GUADALUPE COUNTY, and ARNOLD ZWICKE in violation of his federal and state constitutional rights to freedom of speech and political activity.

IV.

Plaintiff would further show that he is protected as a public employee who engages in speech and political activity. On Plaintiff's date of termination, Plaintiff was qualified and able to continue performing his duties as a law enforcement officer. At the time of Plaintiff's termination, Plaintiff had a reasonable anticipation of being employed as a law enforcement officer until retirement and then being entitled to retirement benefits. Plaintiff's termination was without legal justification. Plaintiff would show that he is entitled to damages, reinstatement, compensation for wages lost and reinstatement of any fringe benefits or seniority rights lost, costs of court and attorney fees.

V.

Plaintiff would show that all conditions precedent have been met for the bringing of this lawsuit.

VI.

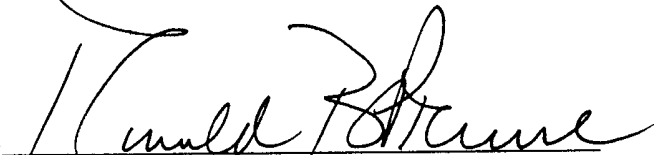
Plaintiff requests prejudgment interest and postjudgment interest.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be duly cited to appear and answer herein; and that upon final trial hereof, the Plaintiff recover judgment against the Defendants for his damages in a sum in excess of the jurisdictional limits of this Court. Plaintiff further prays for both prejudgment interest and postjudgment interest at the lawful rate until fully paid, for all costs of Court incurred in his behalf, and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

LAW OFFICES OF RONALD B. PRINCE
7285 Hwy 87 East
San Antonio, Texas 78263
(210) 826-2492
(210) 826-2435 FAX

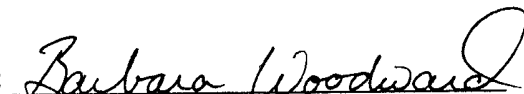
BY:



Ronald B. Prince
State Bar No. 16329300

LAW OFFICE OF BARBARA WOODWARD
417 San Pedro
San Antonio, Texas 78212
(210) 227-7821
(210) 225-4469 FAX

BY:



BARBARA WOODWARD
State Bar No. 21975500

ATTORNEY FOR PLAINTIFF,
STEPHEN LUMAN

FILED 1P110
COURT NO. 04-1062-DV

3:00 p

STATE OF TEXAS

TO ZWICKE, ARNOLD

GUADALUPE COUNTY SHERIFF'S OFFICE

R. Haraway

Defendant, in the captioned cause, was numbered 86428.

"You have been sued. You are hereby an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 60 days after you were served this citation and Petition for Citation Petition, a default judgment may be taken against you." In the above numbered cause, to-wit,

STEPHEN LUMAN

vs.
GUADALUPE COUNTY AND ARNOLD ZWICKE

Said petition filed in said court on the JULY 2ND, 2004
by

RONALD D PRINCE

417 SAN PEDRO

SAN ANTONIO, TX 78212

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, this
July 2nd, 2004

JAMES BEHRENDT, DISTRICT CLERK
GUADALUPE COUNTY COURTHOUSE
101 E. COURT ST.
SAN ANTONIO, TEXAS 78205

BY:

[Signature]

OFFICER'S RETURN

Came to hand on the 07 day of July, 2004, at 8:36
o'clock A.m. Executed at _____, within
the County of Guadalupe, at 3:19 o'clock P.m. on the
08 day of July, 2004, by delivering to the
within named Arnold Zwicke, in person
a true copy of this citation together with the accompanying copy of
the petition, having first attached such copy of such petition to such
copy of citation and endorsed on such copy of citation the date of
delivery.

Not executed, the diligence used to execute being _____
_____ for the following reason _____
_____, the defendant may be found _____

TO CERTIFY WHICH WITNESS MY HAND OFFICIALLY

SUBSCRIBED AND SWORN TO before me
this 08 day of July, 2004

[Signature]
NOTARY PUBLIC

[Signature]
Guadalupe County Sheriff's Office
437-29-7914

COUNTY

RECEIVED

EXPIRES
October 29, 2005

ORIGINAL - return to court

DISTRICT COURT, GUADALUPE COUNTY, TEXAS

CAUSE NO. 04-1062-CV

STEPHEN LUMAN § IN THE DISTRICT COURT
V. § 25TH JUDICIAL DISTRICT
GUADALUPE COUNTY §
AND ARNOLD ZWICKE § GUADALUPE COUNTY, TEXAS

11:00 a.

By *R. Haraway*

**DEFENDANTS GUADALUPE COUNTY AND ARNOLD ZWICKE'S
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S ORIGINAL PETITION**

86428

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants, Guadalupe County and Arnold Zwicke (hereinafter "Defendants"), and file this Original Answer and Affirmative Defenses to Plaintiff's Original Petition and would show unto this Honorable Court as follows:

1. Defendants, exercising their legal rights under customary practice and the Texas Rules of Civil Procedure, deny each and every, all and singular, the allegations of Plaintiff's causes of action and demands strict proof thereof in accordance with Texas Rule of Civil Procedure 92.

AFFIRMATIVE DEFENSES

2. Defendant Arnold Zwicke further asserts his right to qualified/official immunity. At all times relevant to this matter Defendant Zwicke was in the course and scope of his position as Sheriff of Guadalupe County, performing, in good faith, the discretionary job functions attendant to his position and within the scope of his authority. Defendant Zwicke at all times acted in good faith with a reasonable belief that his acts were in compliance with the laws and Constitution of the United States, and he hereby asserts his entitlement to qualified/official immunity from the Plaintiff's suit.

3. Defendant Guadalupe County asserts that during the period of time in question, it did not have any policy, procedure, custom, or practice of denying any individual, including the Plaintiff, any federally protected rights under the United States Constitution. Defendant Guadalupe County is not liable to the Plaintiff under a theory of *respondeat superior*.

WHEREFORE, PREMISES CONSIDERED, Defendants Guadalupe County and Arnold Zwicke pray that upon final trial hereof, Plaintiff takes nothing by this suit, and that these Defendants goes hence with costs and for such other and further relief in law, or in equity, both general and special, to which these Defendants may be entitled.

Respectfully submitted,

McKINNEY & HERNANDEZ
Professional Corporation
615 N. Upper Broadway, Ste. 1280
Corpus Christi, Texas 78477
(361) 879-0300
(361) 879-0303 (FAX)

By: 

Phillip A. McKinney
State Bar No. 13723200
Angelica E. Hernandez
State Bar No. 24027279

**ATTORNEYS FOR DEFENDANTS,
GUADALUPE COUNTY AND
ARNOLD ZWICKE**

CERTIFICATE OF SERVICE

I certify that on August 2nd, 2004, a complete and correct copy of the foregoing pleading was served on each party by delivery to the following in the manner indicated below:

Via Fax (210) 826-2435 & CM/RRR:

Ronald B. Prince
Law Offices of Ronald B. Prince
7285 Hwy. 87 East
San Antonio, Texas 78263

Via Fax (210) 225-4469 & CM/RRR:

Barbara Woodward
Law Office of Barbara Woodward
417 San Pedro
San Antonio, Texas 78212

A handwritten signature in black ink, appearing to be 'P. McKinney', written over a horizontal line.

Phillip A. McKinney

CIVIL DOCKET
25th Judicial DistrictGuadalupe County
Case No. 04-1062-CVThe Software Group, Inc.
July 2nd, 2004 8:21am

STEPHEN LUMAN vs. GUADALUPE COUNTY AND ARNOLD ZWICKE

Filed : 07/02/2004
Status: Filed
Type: Other Civil LawJudge
DWIGHT E. PESCHELCourt Reporter
PAULA MILLER

Date		Volume	Page
Events & Orders of the Court			
07/02/04	DOCKET SHEET		
07/02/04	PETITIONER'S ORIGINAL PETITION		
07/02/04	CITATION Issued -Defendant, GUADALUPE COUNTY		
07/02/04	CITATION Issued -Defendant, ZWICKE, ARNOLD		

SCANNED

I, JAMES BEHRENDT, Clerk of the District Court, in and for Guadalupe County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the original now on file. Given under my hand and seal of said Court at office in Seguin, Guadalupe County, Texas on the

30th day of JUN 04
JAMES BEHRENDT, Clerk, 25th Judicial District, Guadalupe County, Texas

By Paula Miller Deputy